

AUG 8 1967

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 247

THE PUYALLUP TRIBE, A Federal Organization,
Petitioner,

v.

**DEPARTMENT OF GAME OF THE STATE OF WASHING-
TON, and the DEPARTMENT OF FISHERIES OF THE
STATE OF WASHINGTON,**
Respondents.

BRIEF OF AMICUS CURIAE,

**State of Oregon,
in Support of**

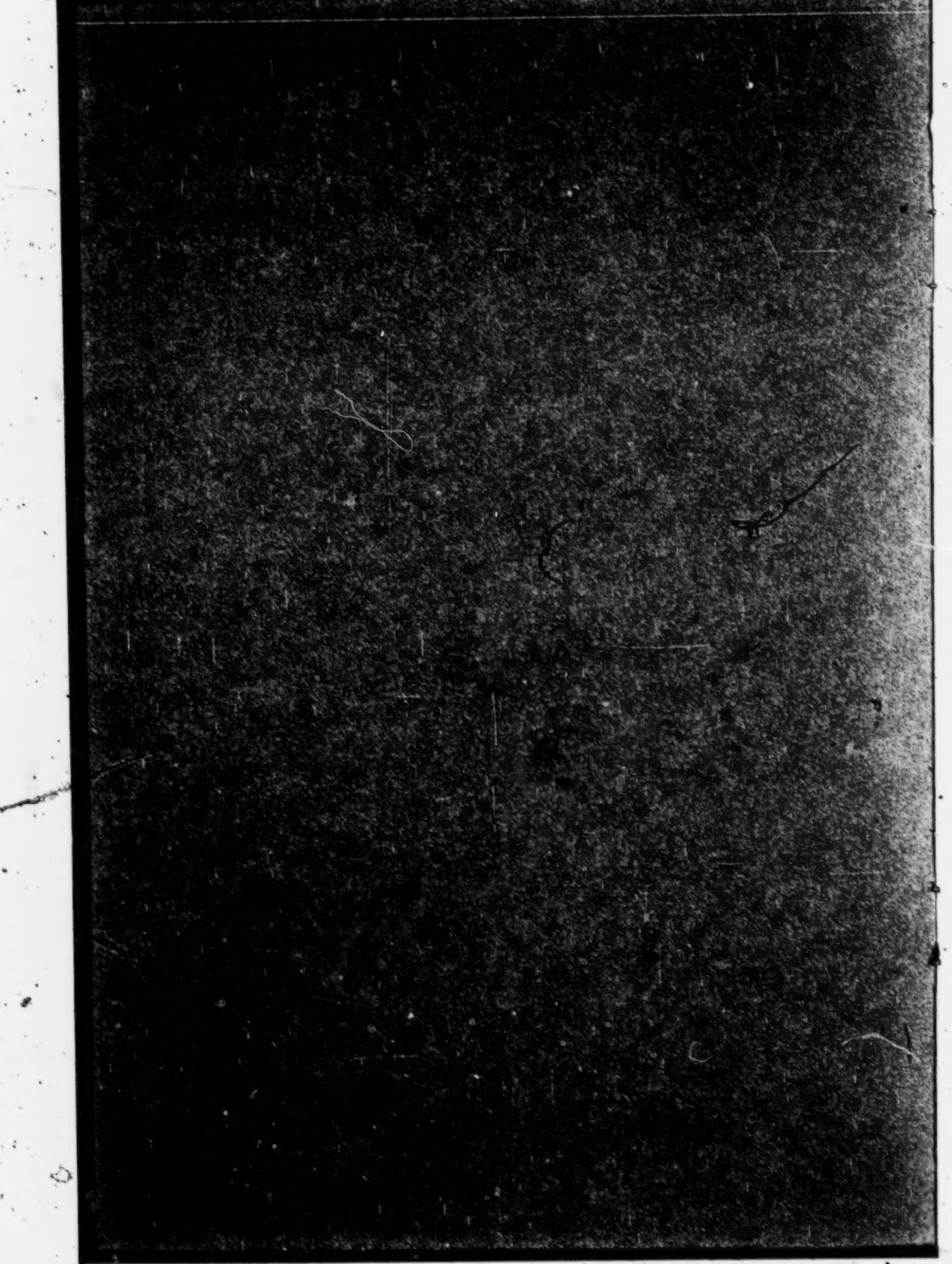
PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Washington

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BRIEF OF AMICUS CURIAE

State of Oregon,

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PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Washington

To the Honorable, the Chief Justice and Associate
Justices of the Supreme Court of the United States:

The Sovereign State of Oregon, through ROBERT Y.
THORNTON, its Attorney General, as amicus curiae,
prays that a Writ of Certiorari issue to review the judgment of the Washington State Supreme Court in the above entitled case, the opinion of which was filed on the 12th day of January, 1967, and which became a final judgment on March 13, 1967, according to remittitur of Supreme Court dated March 15, 1967.

STATEMENT OF INTEREST OF AMICUS

The State of Oregon adjoins the State of Washington on the South, and the Columbia River forms the major part of the boundary between the states. The Columbia River and tributaries are inhabited by the same species of migratory fish as are involved in this appeal. At present, there are several tribes and bands of Indians in the State of Oregon, Washington, and Idaho who assert the right under color of treaties negotiated with the United States in 1855 to conduct an unregulated fishery upon the stocks of migratory fish which inhabit the Columbia River system. The treaties which they claim grant them an immunity to the operation of State laws are:

Treaty with the Yakimas, June 9, 1855, (12 Stat. 951); Treaty with the Nez Perce, June 11, 1855, (12 Stat. 957); Treaty with the Tribes of Middle Oregon, June 25, 1855, (12 Stat. 963); and Treaty with the Walla Walla, Cayuse, etc., June 9, 1855, (12 Stat. 945).

The language in Article 1. upon which the Treaty Indians in the Columbia River area rely to support their position that they are exempt from State conservation laws, is identical with the language relied upon by the Puyallup Indians in this case. This language was interpreted by the Supreme Court of the State of Washington in the decision which is the subject of this appeal.

Any decision rendered by this court or other courts of competent jurisdiction, has an immediate and controlling effect upon the State of Oregon in its conduct *vis a vis* the Indian tribes inhabiting the Columbia River

system in managing and conserving the wildlife resources of the State which belong to the people of the state.

REASON FOR GRANTING THE WRIT

The construction of the treaty fishing rights by the lower courts is not in accord with applicable decisions of this court.

The State of Oregon is in substantial agreement with recent decisions of the Supreme Court of the State of Washington, *State v. McCoy* (63 Wash. 2d 42), (387 Pac. 2d 942); *State v. Herman Moses* (70 W.D. 2d 276); *Department of Game v. The Puyallup Tribe, Inc.* (70 W.D. 2d 241); *Department of Game v. Nugent Kautz* (70 W.D. 2d 270), the latter three of which are on appeal to this court. However, these decisions are not binding in this State, especially in the Federal Courts.

The rule, as enunciated by this court, is expressed in *Organized Village of Kake v. Egan* (1962) (82 S. Ct. 562) (369 US 60), where Justice Frankfurter said: "Even where reserved by federal treaties, off-reservation hunt- and fishing rights have been held subject to state regulation." The cases cited in support of this statement are: *Ward v. Race Horse* (163 US 504), (16 S. Ct. 1076), (41 L. Ed. 244); *Tulee v. Washington* (315 US 681), (62 US S. Ct. 862), (86 L. Ed. 1115).

This court has never held that the states lack the power to regulate off-reservation treaty Indian fishing. See in addition: *U.S. v. Winans* (198 US 371); *State of New York, ex rel Kennedy v. Becker* (241 US 556).

However, as a result of two cases, *Confederated Tribes of the Umatilla Indian Reservation, et al v. Maison et al*, (186 Fed. Supp. 519), and *Maison v. Confederated Tribes, et al* (314 Fed. 2d 169, Cert. Den. 375 US 829, 11 L. Ed. 2d 60), Oregon State officials are enjoined from enforcing state conservation laws on off-reservation areas against members of the Confederated Tribes of the Umatilla Indian Reservation.

CONCLUSION

Therefore, the Sovereign State of Oregon, through ROBERT Y. THORNTON, its Attorney General, as amicus curiae, respectfully prays that the Supreme Court of the United States grant the writ of certiorari as petitioned for in this case in order that the question as to the power of the several states to regulate the off-reservation hunting and fishing rights by its treaty Indian citizens be again resolved.

Respectfully Submitted:

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